
TABLE OF CONTENTS

Committee Report No 14: Social Security within a Regional Context	558
14.1 Introduction and Background	558
14.2 Salient features of social protection within SADC.....	559
14.3 Social protection at SADC level: a synopsis of regional instruments.....	560
14.4 Obstacles in the way of co-ordination and possibilities for co-ordination	562
14.5 The social protection of SADC member states citizens as migrants in SADC and lessons from abroad.....	563
14.6 Improving social protection of SADC member states citizens in SADC	564
14.7 Regional Implications for South Africa	565
14.8 Conclusions.....	565
REFERENCES	567

LIST OF TABLES

Table 14.1: Social security systems in Southern Africa, a comparative assessment560

Committee Report No 14

Social Security within a Regional Context

14.1 Introduction and Background

Although one of the most promising, the SADC region is one of the poorest in the world. The **context** in Southern Africa that informs the state and development of social security systems relates to:

- (i) **economic features** comprising limited productivity, persistently high inflation rates, high and increasing informal sector employment, skewed income distributions;
- (ii) **demographic characteristics**, with reference to uneven population densities, low life expectancies, high birth rates, differing patterns of retirement; and
- (iii) **issues of governance**, relating to emerging democracies and weak subsystems for public administration.

The emphasis of SADC (which presently consists of fourteen states) has changed from “development coordination” to developmental, economic and regional integration”. This is bound to influence social security policy making in the future.

The SADC objectives are set out in the founding Treaty, which include the promotion of economic and social development, the establishment of common ideals and institutions, among other objectives. According to article 5 of the Treaty, some of SADC’s objectives are to achieve development and economic growth, alleviate poverty, enhance the quality of life of the peoples of Southern Africa and support the socially disadvantaged through regional integration. In order to achieve these **ideals, a programme of regional integration, collective self-reliance and interdependence of member states is envisaged.**

The task of **developing social policy** has been entrusted to the SADC Employment and Labour Sector, and its Sub-committee on Occupational Health and Safety and Social Security. The sector has given a central place to the **protection of vulnerable groups** and the development of common approaches in its activities.

It is also clear from examining both the policy documents and activities of SADC that a **commitment to the development of enhanced social protection does exist.**

These objectives of the Treaty can only be reached through the creation and development of viable social protection measures and structures throughout the region. **A regional collaborative approach is therefore required.** This approach should include all governmental as well as non-governmental sectors of society in order to address the issues of universal social protection for all in the region.

It is, therefore, important to start this process by **identifying current social protection measures** in the SADC region, and evaluating the extent to which these successfully relate to and address issues of poverty and social exclusion, and enhance the standard and quality of life.

14.2 Salient features of social protection within SADC

An analysis of the relevant measures and the accompanying institutional framework in SADC member states clearly reveals the **underdeveloped state of social protection in most of the states**, and the **lack of coordination** in the region.

Social security schemes across Southern Africa mainly focus on the protection of people who are **employed in the formal sector**. Often **only certain categories** of the formally employed benefit from social security schemes set up to deal with particular contingencies.

Coverage of targeted populations **tends to be narrow**, leaving in particular those in rural areas, without any form of social protection. The **benefits** paid by many schemes are **inadequate** to meet basic needs. In the case of **non-contributory schemes**, a heavy **reliance on general tax** revenues strains government financing, keeping benefits at low levels in most countries.

It is also clear that the systems, in keeping with the underlying socio-economic, conditions countries, are hugely **diverse in nature**. The Committee has not been able to research many of the **country systems due to time constraints and limited available information and data**

Administrative inertia and institutional inefficiency in the area of social security delivery are, with some notable exceptions, apparently major obstacles.

Most of the countries in the region have embarked on **restructuring processes**, which include, amongst others: (a) a clear **transition from national provident fund to public pension fund systems**; and (b) the **introduction of short-term benefits** as a first step towards developing the social security system holistically.

Addressing social needs and problems by way of social protection measures within the region is of paramount importance to achieve the goals and aspirations of economic and social integration and co-operation. Stark differences in the quality of life are the driving force behind human migration. A regional approach on social collectivity and equality is therefore in South Africa's interest. Effective measures should be put in place to ensure compliance with treaties and the protocols. Table 14.1 below indicates some of the key features of social security provision in countries in the region

Table 14.1: Social security systems in Southern Africa, a comparative assessment

Type of Scheme	Contingencies	Bot	Les	Mal	Mau	Moz	Nam	RSA	Swa	Tan	Zam	Zim
Mandatory Savings schemes (mainly by way of National Provident Funds) (being replaced)	Old Age								X	X	X	
	Disability								X	X	X	
	Death								X	X	X	
Non-Contributory Schemes	Old age	X			X		X	X				
	Disability				X		X	X				
	Widowhood				X							
	Orphan hood/ Children				X			X				
	War veterans	X					X	X				
Social Insurance	Old Age				X	X				X		X
	Disability				X	X				X		X
	Survivorship/ Death				X	X	X MSD	X UIF		X		X
	Sickness					X	X MSD	X UIF				
	Unemployment							X UIF				
	Maternity						X MSD	X UIF				
	Adoption							X UIF				

From the Table above it is clear that a distinct social security paradigm is also necessary in order to regulate, at a regional level, social insurance measures for particular categories (e.g. the employed) and, with this purpose in mind, to develop measures of co-ordination in the region. Finally, it may be necessary to develop baseline standards that apply across the board in the region, but are implemented with reference to the particular socio-economic status of each of the member countries. These baseline standards may rely on either internationally accepted norms and/or generally applicable human rights norms.

Analysis of regional aspects highlights, amongst others, the extent of the inadequacy social security arrangements in the region. Studies in the region further indicate the apparent failure of domestic social security measures to address poverty alleviation meaningfully. Social inclusion and participation is not an option for large numbers and significant categories of people. This flows from the fact that most country specific social security systems cater exclusively for the whole or part of the formally employed, thereby marginalizing the non-employed workforce, the self-employed, the informally employed, and the unemployed.

In addition, the growing interdependence in the region, and the more extensive migration of the region's workers and residents, suggests the need for a common response.

14.3 Social protection at SADC level: a synopsis of regional instruments

A number of important measures have already been undertaken. A **draft Protocol on Freedom of Movement of Persons** in the SADC was concluded in May 1998. It suggests a **phased approach**, whereby the objectives of freedom of movement of persons, namely visa-free entry, residence and establishment for SADC citizens in the territories of member states, are incrementally and progressively attained.

A **Social Charter of Fundamental Rights** in the SADC that underpins the need for social protection, in particular of workers and vulnerable groups, has been agreed and is now open for ratification by SADC member states. It makes comprehensive provision for the establishment of **harmonised programmes of social security** throughout the region. The onus to implement the SADC Social Charter lies with the **national tripartite institutions and existing regional structures**.

The Charter contains provisions relating to the **social protection of both workers and those who are not employed**—and regulates the position of workers (in terms of social protection) more comprehensively than those who do not work.

The Charter requires **equal treatment for men and women**, also in the area of **social protection**. Protection of **children and young people** is emphasised. **Disabled persons** are also given priority in the Charter.

Member states undertake to create an enabling environment in accordance with arrangements applying to each country to **protect the elderly**. **Every worker** of the SADC region shall at the time of retirement be able to enjoy resources affording him or her a **decent standard of living**, including equity in post employment security schemes. For those who are not entitled to a pension and who do not have other means of subsistence, the Charter determines that such a person shall be entitled to **adequate social assistance** to cater specifically for basic needs including medical care.

Minimum requirements and the harmonisation of these requirements are also foreseen, *inter alia* in the area of **paid maternal leave** and occupational health and safety protection.

Several Protocols give effect to the different aims and objectives of the Treaty. When analysing the provisions of the said Protocols, it becomes clear that **social protection issues are not always accorded the priority** they are supposed to enjoy in terms of the aims, purposes and provisions of the Treaty.

Although much has been provided for at the level of economic integration and co-operation in the different Protocols, and given certain exceptions, **relatively little is foreseen in the area of social protection**. **Standard setting** in the Protocols, in particular in the area of social protection, is vague and broad.

14.4 Obstacles in the way of co-ordination and possibilities for co-ordination

It is suggested that the **most important obstacles** in the way of social security co-ordination within SADC are:

The divergent nature and undeveloped and underdeveloped state of social security regulation in the SADC region. The provisions of the SADC Protocols largely confirm the neglected state of social security protection in the region. The **lack of protection granted to migrant workers and non-citizens generally**—both the social security (insurance) and social assistance systems in most of the SADC countries are, as a rule, **territorial- and nationality-based**.

However, the common problems of **poverty and inequity**, unemployment and underemployment, **require comprehensive strategies, including social protection measures**. Alongside economic- and regional integration, addressing specific contingencies such as sickness, maternity, employment injury, unemployment, invalidity, old age and death; the provision of medical care; and the provision of subsidies for families with children. Other new or indirect contingencies such as poverty, lack of food and water, transport, energy and education also need to be addressed holistically on the regional level.

Furthermore, the very aim of **economic integration**, as is evident in most of the Protocols, and the **resultant movement of labour** from one SADC country to another, requires that provisions must also be adopted to **co-ordinate** current social security systems in the SADC countries.

Some of the **possible mutually supportive co-ordination scenarios** which present themselves are the following:

- Employing **common and fundamental values in the African and southern African context**;
- Employing **internationally accepted social security standards and/or human rights approaches as a baseline measure**, and linking these to an appropriate yardstick, which might be national in nature;
- **Adopting co-ordination measures** in order to deal effectively and fairly with the position of the large number of **migrants** in social security law; and
- The **development of the domestic social security systems** on the basis of being informed by an adopted baseline approach and simultaneously facilitating co-ordination of social security measures in the region.

As far as (a) is concerned, African human rights instruments, notably the African Charter on Human and Peoples' Rights, contain a distinctive African character. Some of the values reflected in these instruments are in particular relevant for social security purposes. These values include the **protection of people's rights, group solidarity**, the **protection of the family** as natural unit and basis of society, the **right of the aged and disabled to special measures of protection**, and the

duties that the **family and the community** have in the social protection of the most needy in the family and the community.

As far as (b) is concerned, one of the possibilities that can be envisaged, is the **adoption of internationally accepted minimum standards for the region, preferably by way of a multilateral instrument**. However, given the divergence and un- as well as underdeveloped state of social security systems in most of the SADC countries, one should leave some room for adopting **different (national) yardsticks**, at least initially, to measure compliance with the said standards.

As far as (c) is concerned, much can be learnt from the **long-standing tradition in the international community to improve standards for non-citizen migrants in national social security law**. Both on a **global level** (ILO) and on a **regional** (e.g. Council of Europe, European Union) and **bilateral level international instruments** have come into being which purport to protect non-citizen migrants (see also below).

As far as (d) is concerned, the **more advanced** the respective systems become, the more this could serve the cause and facilitate the process of co-ordination. In formulating baseline standards applicable to the development of domestic systems, certain core principles may be of some help.

14.5 The social protection of SADC member states citizens as migrants in SADC and lessons from abroad

While **large numbers of SADC residents are moving across borders**, and increasingly so, it would appear that the lack of protection granted to migrant workers in the field of social security is one of the root causes of **social exclusion** in Southern Africa.

This is also true of the treatment of non-citizens in South African social security law. Legally speaking the exclusion of non-citizens raises **serious questions of a public international law and constitutional** nature.

It would also appear, barring a limited number of exceptions, that **South Africa**, as is the case with the other SADC member states, **is not yet linked to the network of bilateral and multilateral conventions on the co-ordination of social security**. This may operate to the **disadvantage of both non-citizen migrant workers in South Africa** who return home, and **South Africans who take up temporary or permanent employment or residence in other countries**.

In the **EU context**, as is the case on the global level, bilateral and multilateral instruments have been adopted to regulate the position of non-citizens in social security. These instruments **allow for the co-ordination of social security systems** and generally make provision for the following:

- **Choice of law**, identifying the legal system which is applicable (as a rule the law applicable is that of the place of employment, the *lex loci laboris*);
- **Equal treatment** (all discrimination based on nationality is prohibited);

- **Aggregation of insurance periods** (all periods taken into account by the various national laws are aggregated for the purposes of acquiring and maintaining entitlement to benefits, and of calculating such benefits); and
- **Maintenance of acquired benefits and payment of benefits to Community residents, irrespective** where in the Community they reside (**exportability principle**).

What these measures effectively do is to **replace the territorial principle** with a personal entitlement to benefits, which follow the beneficiary.

Social assistance, however, usually falls squarely within the domain of national jurisdiction. However, certain measures of recent origin attempt to foster **some measure of synergy and co-ordination in the area of social assistance.** These measures suggest the adopting of a **minimum level of protection for all residents**, and the establishment of **common criteria.** Country-specific indicators are suggested as a benchmark

14.6 Improving social protection of SADC member states citizens in SADC

The principles of choice of law, non-discrimination, aggregation, maintenance of acquired rights and exportability of benefits are **widely known and applied, even elsewhere in the African context**, albeit sometimes on a qualified basis.

And yet, both on a bilateral and multilateral basis these arrangements are conspicuous by their **almost total absence in the SADC context.** This may be ascribed partly to the colonial heritage of these countries, partly to the lack of a history of regional and economic integration (at least before the 1990's), and partly to the sheer extent of poverty in the member countries, which tended to shift the focus in social matters to domestic needs and solutions.

On the one hand, **strong incentives** to develop measures of **co-ordination** as far as regional migration is concerned, may be **less apparent in the SADC Treaty** than in the EU counterpart instruments.

And yet, on the other hand, there is **ample reason why it is imperative to adopt measures to co-ordinate the said systems.** The growing extent of **regional integration** and the realisation that **collective and co-ordinated approaches** are needed to foster integration and to deal effectively with the region's massive problems, would require adopting innovative approaches.

It is suggested that **both regional and unilateral approaches would be required.**

As far as **regional responses** are concerned, despite the difficulties involved, it is necessary (and appears possible) to **introduce** principles relating to **choice of law, aggregation of insurance periods, maintenance of acquired rights and exportability of benefits**, at least, but not necessarily restricted to, same or similar schemes.

Given the diversity of schemes in the region, as a **starting point** one would have to identify those areas where **common elements** are present. **Employment injury schemes** could be the ideal first candidate. These schemes are present in all the member states, sometimes as a public system, sometimes outsourced to private insurers, and sometimes treated as an individual employer liability.

It may also be possible, if not necessary in the long run, given the varied public/private nature of some of the schemes in the region (e.g. retirement), to enter into some kind of **asymmetrical reciprocity on a bi- or multilateral basis, whereby different types of benefits are linked**.

It would appear that it might be required to adopt **certain country-specific minimum standards** (using a measurable or fixed criterion such as (a percentage of) minimum wage as the appropriate benchmark), on the basis of universally accepted international standards in social security. This should **preferably occur on a multi-lateral basis**, and be extended to citizens of other SADC member states (and their families/dependants) who migrate within the region.

As far as **unilateral responses** are concerned, it should be noted that the **strong human rights-based approach in South Africa** has already had a major impact on addressing the plight of particularly vulnerable groups in South African social security. This is an area where **governments and jurisprudence** can do much to extend protection to migrants within the region.

14.7 Regional Implications for South Africa

Provisions in South African social assistance and in some social insurance laws distinguish between nationals and non-nationals.

It is, therefore, necessary, firstly, to consider these distinctions between South African citizens and citizens of other SADC member states. Secondly, to develop a common framework and charter on social protection and to ensure a consistent approach is implemented. Thirdly, it will be necessary for South Africa as a SADC member state to engage actively in promoting the social protection dimension of SADC integration and interdependence. Fourthly, active involvement in developing acceptable baseline standards in the area of social protection for the region is required. These standards should be implemented with reference to the particular socio-economic status of each of the member countries, as suggested above.

Finally, it will be necessary for South Africa to adopt measures aimed at co-ordinating its social security system with those of the other SADC member states. This can be done either bilaterally and/or (preferably) multilaterally.

14.8 Conclusions

It is clear from the analyses above that most of the social security schemes across Southern Africa mainly focus on protecting people who are employed in the formal sector. Coverage of targeted populations tends to be narrow, excluding the most vulnerable across the region, in particular those in rural areas, without any form of social protection.

The benefits paid by many schemes are inadequate to meet basic needs. In the case of non-contributory schemes, a heavy burden reliance on general tax revenues strains Government financing, keeping benefits at low levels in most countries. Moreover, the social welfare schemes (or non-contributory schemes) are still in an embryonic stage, and the number of beneficiaries has been low as well as the benefits.

It is also clear that the systems, as is the case with the underlying socio-economic, administrative and political profiles of the countries, are hugely diverse in nature. This, of course, makes it difficult to develop baseline standards for the region and to adopt measures to co-ordinate the various country social security systems. This is exacerbated by the fact that many of the country systems have not been well researched.

Co-ordination of social security is presently almost totally absent in the region. The few examples that do exist do not function satisfactorily, while attempts to enter into more comprehensive arrangements still have to bear fruit.

Administrative inertia and inefficiency in the area of social security delivery are, with some notable exceptions, apparently major obstacles. And yet it would appear that tailor-made solution, for example, relying on non-Governmental organizations and traditional authorities, to assist in this regard, have been relatively successful.

Most of the countries in the region have embarked on restructuring processes. Some of these have already yielded interesting results, such as a clear transition from national provident fund to pension fund systems and the introduction of short-term benefits as a first step towards developing the social security system holistically. More research and policy analysis is required to understand the role and function of informal social security mechanisms and how they link to the formal system in the region as a whole.

The aim of economic integration as is evident in most of the Protocols and the resultant movement of labour from one SADC country to another, requires that provisions be adopted to harmonise and co-ordinate current social security systems in the SADC countries. Although the Social Charter contains more direct provisions in this regard, specific standards still need to be developed to assist the Member States to fulfil their duties as expected at a regional level.

REFERENCES

- Mhone G and Kalula E *Draft Report of a Study on the Formulation of Policy Objectives, Priorities and Strategies for the SADC Employment and Labour Sector—Appendix 2* (November 2000)
- Olivier MP (red) ea *Social Security Law General Principles* (Durban 1999)
- SADC Employment and Labour Sector (ELS) *Draft Social Charter of Fundamental Rights in the SADC* (ELS.MSP/2000/4.3.5)
- Fultz E and Pieris B *The Social Protection of Migrant Workers in South Africa* ILO/SAMAT Policy Paper No 3 (Zimbabwe 1997)
- Fultz E and Pieris B *Employment Injury Schemes in Southern Africa: An Overview and Proposals for Future Directions* ILO/SAMAT Policy Paper No 7 (Zimbabwe 1998)
- Loewenson R *Occupational Health and Safety in Southern Africa: Trends and Policy Issues* ILO/SAMAT Policy Paper No 8 (Zimbabwe 1999)
- Fultz E and Pieris B *Social Security Schemes in Southern Africa An overview and proposals for future development* ILO/SAMAT Policy Paper No 11 (Zimbabwe 1999)